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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,789	01/19/2001	Timothy Robinson	129510.00001	1385

21269 7590 03/05/2007  
PEPPER HAMILTON LLP  
ONE MELLON CENTER, 50TH FLOOR  
500 GRANT STREET  
PITTSBURGH, PA 15219

EXAMINER
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APPLE, KIRSTEN SACHWITZ

ART UNIT	PAPER NUMBER
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3693

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/765,789

Applicant(s)

ROBINSON, TIMOTHY

Examiner

Kirsten S. Apple

Art Unit

3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 59-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 59-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## Detailed Action

This action is in response to RCE filed on 7/5/06 & restriction response filed 12/4/06.

### *Claim Rejections - 35 USC § 103*

The Examiner has read and reviewed all of the information provided by the Applicant.

The examiner rejects as final claims 59-67 under 35 USC 103.

The Applicant attention is re-drawn to the following:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 59-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seeley (6,615,191) in view of Foladare et al. (5,914,472).

**Re claim 59:** Seeley discloses:

*A method comprising:*

*Receiving (at merchant device) a system ID (without using a physical access device) and biological sample (see Seeley, Figure 5, Item 17 & 18)*

*Transmitting a system ID to database (see Seeley, Figure 5-6, "data storage")*

*Receiving registered biological ID data that corresponds to system ID (see Seeley, Figure 6, arrow from "data storage")*

*Verifying identity of party based on a comparison at merchant device of data derived from the proffered biological sample to registered biological ID (see Seeley, Figure 6, Item 39)*

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Although Seeley does not have third party, Foladare claims ""third party""

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to add "third party" as taught in Foladare to Seeley.

It is clear that one would be motivated to have strong verification of all users.

**Re claim 60:** Seeley discloses:

*Assessing whether the third party is permitted to access the value account based upon conditions set by the primary account holder*

**Re claim 61:** Seeley discloses:

*Condition = amount (see Foladare, Column 2, line 59 "spending limits)*

**Re claim 62:** Seeley discloses:

*Condition = period of time (see Foladare, Column 2, line 40-41 "may be subject to restrictions determined by the account holder")*

**Re claim 63:** Seeley discloses:

*Condition = geographical locales (see Foladare, Column 2, line 40-41 "may be subject to restrictions determined by the account holder")*

**Re claim 64:** Seeley discloses:

*Condition = type of merchant (see Foladare, Column 2, line 40-41 "may be subject to restrictions determined by the account holder")*

**Re claim 65:** Seeley discloses:

*Condition = category of goods (see Foladare, Column 2, line 40-41 "may be subject to restrictions determined by the account holder")*

**Re claim 66:** Seeley discloses:

*A method comprising:*

*Receiving (at merchant device) a system ID (without using a physical access device) and biological sample (see Seeley, Figure 5, Item 17 & 18)*

*Verifying identity of party based on a comparison at merchant device of data derived from the proffered biological sample to registered biological ID (see Seeley, Figure 6, Item 39)*

Although Seeley does not have third party, Foladare claims ""third party""

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to add "third party" as taught in Foladare to Seeley.

It is clear that one would be motivated to have strong verification of all users.

**Re claim 67:** Seeley discloses:

*Transmitting a system ID to database (see Seeley, Figure 5-6, "data storage")*

*Receiving registered biological ID data that corresponds to system ID (see Seeley, Figure 6, arrow from "data storage")*

*Verifying identity of party based on a comparison at merchant device of data derived from the proffered biological sample to registered biological ID (see Seeley, Figure 6, Item 39)*

#### ***Response to Arguments***

Applicant's arguments filed 12/4/06 have been fully considered but they are not persuasive.

In particular, and respect to Claim 1 the Applicant argued 1<sup>st</sup>: Drummond and Foladare fail to teach "receiving, at a merchant device, a system identification number and a biological sample proffered by the third party, wherein the system identification number is received without using a physical access device possessed by the third party" specifically receiving a system ID without using a physical access device possessed by the third party.

The Examiner refutes the argument made by the Applicant and draws the attention to Seeley (a new reference offered in this new non-final action) Figure 6, arrow from "data storage".

Applicants argued 2<sup>nd</sup>, Drummond and Foladare fail to teach in claim 66 & 67 "verifying an identity of the third part based on comparison of merchant device of data derived from the proffered biological sample to registered biological ID data that corresponds to system ID number, where registered biological ID data is retrieved from merchant device."

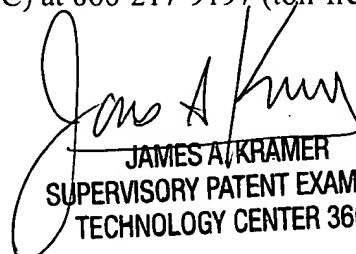
The Examiner refutes the argument made by the Applicant and draws the attention to see Seeley, (a new reference offered in this new non-final action) Figure 6, Item 39.

#### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kirsten S. Apple whose telephone number is 571.272.5588. The examiner can normally be reached on Monday - Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-272-6126.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JAMES A. KRAMER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

2/27/07

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